

**DISTRICT OF COLUMBIA**  
**DOH Office of Adjudication and Hearings**  
825 North Capitol Street N.E., Suite 5100  
Washington D.C. 20002

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

IBN LATIMORE  
Respondent

Case No.: A-01-80083

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**FINAL ORDER**

**I. Introduction**

On August 31, 2001, the Government filed a request to convene a hearing pursuant to the District of Columbia's Dangerous Dog statute.<sup>1</sup> *See* D.C. Code §§ 6-1021, *et seq.* (1981 ed.). The purpose of this hearing would be to determine whether a dog named "Bullet," owned by Respondent Ibn Latimore<sup>2</sup>, is a dangerous dog as defined in D.C. Code § 6-1021.1(1)(A) (1981 ed.) and, if so, whether the dog would constitute a significant threat to the public health and safety if returned to Respondent. If both of these inquiries are answered in the affirmative, the Government would be authorized to humanely destroy the dog in accordance with D.C. Code § 6-1021.3 (1981 ed.).

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<sup>1</sup> This administrative court has jurisdiction over this matter pursuant to Reorganization Plan No. 4 of 1996, Mayor's Order Nos. 97-42, 99-68, and 00-98 and Department of Health Organizational Order Nos. 99-24 and 01-26.

<sup>2</sup> Respondent has identified himself in these proceedings without challenge as the owner of Bullet. *See* D.C. Code § 6-1021.1(4) (1981 ed.). Accordingly, I find that Respondent is the owner of the dog for all purposes relevant to these proceedings.

I scheduled a telephone status conference in this matter for September 7, 2001 and, pursuant to the requirements of D.C. Code § 6-1021.2(c) (1981 ed.), set a hearing date of September 18, 2001. At the September 7, 2001 status conference, Thomas Collier, Esq., entered an appearance on behalf of the Government, and Respondent appeared *pro se*. At the start of the status conference, I advised Respondent of his right to have an attorney represent him in these proceedings. Respondent stated, however, that he intended to proceed without counsel.

I subsequently issued a Case Management Order requiring the parties to file and serve copies of any evidence they anticipated introducing at the hearing, along with a list of anticipated witnesses. The Government submitted its exhibit and witness lists as required. Respondents submitted a witness list by facsimile to the Government, which this administrative court received at the hearing.

The hearing convened as scheduled on September 18, 2001. The Government put forth the following witnesses: Charles Dorch, who, along with his dog “Shang-Hi,” was allegedly attacked by Respondent’s dog, testified about the attack and the resulting injuries suffered; and Peggy Keller, Chief of the Animal Disease Control Section of the D.C. Department of Health, who testified about information she had received relating to a June 18, 2001 incident involving Respondent’s dog, and authenticated certain documents offered by the Government relating to the attack. The Government also placed into evidence nineteen (19) previously submitted exhibits, Petitioner’s Exhibits 100-118 (“PX 100-118”) which were admitted without objection.

Respondent put forth the following witnesses: Russell Carter, who testified about a June 18, 2001 incident involving Respondent's dog, as well as the aftermath of the alleged attack on Mr. Dorch and his dog; and Tanya Washington and Yvonne Couser, each of whom testified about their personal experiences with Respondent's dog. Respondent did not submit any documentary evidence at the hearing.

At the close of the hearing, I held the record open until September 28, 2001 specifically to allow Respondent the opportunity to submit evidence regarding his ability to comply with the requirements of D.C. Code §§ 6-1021.4 and 6-1021.5 (1981 ed.) in the event his dog were to be declared a dangerous dog under the statute.<sup>3</sup> See *DOH v. Latimore*, OAH No. A-01-80083 at 2 (Order, September 19, 2001). The Government was permitted to file any objections to Respondent's submissions by October 5, 2001, after which time the record would close.

On October 3, 2001, this administrative court received an application from Respondent to extend the September 28, 2001 submission deadline. Respondent did not indicate, however, the duration of the requested extension. In support of the application, Respondent stated that he was in the process of obtaining liability insurance, and attached to the request a September 26, 2001 rate quote from State Farm Fire and Casualty Company. The rate quote has been marked as Respondent's Exhibit ("RX") 207 ("RX 207").<sup>4</sup> The Government filed an opposition to Respondent's application on October 12, 2001, and on October 15, 2001, I issued an order granting the application in part, and requiring that any additional submissions be filed no later

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<sup>3</sup> I questioned Respondent at the hearing regarding his ability to comply with the requirements of D.C. Code §§ 6-1021.4, 6-1021.5 (1981 ed.). Respondent testified that he believed he either was currently meeting or could meet all of those requirements.

than October 22, 2001.<sup>5</sup> See *DOH v. Latimore*, OAH No. A-01-80083 at 2 (Order, October 15, 2001).

Prior to the issuance of the October 15, 2001 Order, however, Respondent submitted additional documentary evidence to this administrative court on October 12, 2001. These materials have been marked as RX 200-206.<sup>6</sup> The October 15, 2001 Order allowed the Government to submit a response to these documents, as well as any additional submissions by Respondent, on or before October 26, 2001, after which time the record would close.<sup>7</sup>

The Government elected not to file a response within the allotted time. The statute requires a decision to be reached within five (5) days after the close of the record. This decision has been issued in accordance with that requirement, excluding intervening weekend days.

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<sup>4</sup> RX 207 is admitted into the record.

<sup>5</sup> In its opposition, the Government noted that the rate quote provided by Respondent related to an address in Forestville, MD, with no reference to Respondent's District of Columbia address. In addition, the Government noted that, even assuming the rate quote applied to Respondent and a policy was ultimately obtained, there was no indication that the quoted personal liability coverage was applicable to attacks by a dog, particularly a dog who had been declared dangerous under District of Columbia law.

<sup>6</sup> RX 200-206 are admitted into the record.

<sup>7</sup> By October 23, 2001, this administrative court had not received any additional submissions from Respondent.

## **II. Findings of Fact**

Based upon the testimony of all the witnesses, my evaluation of their credibility, the documents admitted into evidence, and the entire record in this matter, I now make the following findings of fact:

Respondent resides at 5304 James Place, N.E. PX 100; PX 101. Respondent is the owner of “Bullet,” a 13-month-old male pit bull-type dog. PX 100; RX 203. Respondent’s dog resides with him at the 5304 James Place address, and is housed in a kennel-type structure within the fence-enclosed yard of the residence. RX 203.

### **The July 31<sup>st</sup> Incident**

At approximately 6:30 PM on Tuesday, July 31, 2001, Mr. Dorch was walking his dog “Shang-Hi,” an 11-month-old female shar-pei-type dog, in the 800 block of Division Avenue, N.E. PX 102; PX 103. Shang-Hi was on a leash. Mr. Dorch then proceeded to cross over to the eastern side of Division Avenue past James Place, which intersects Division Avenue. At that time, Mr. Dorch heard a dog barking and then observed a dog, which he later learned was Respondent’s dog, “Bullet,” running towards him without a leash, and from the direction of James Place.<sup>8</sup> Respondent’s dog began to attack Shang-Hi. Mr. Dorch picked up Shang-Hi in an

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<sup>8</sup> A friend of Respondent had been walking Respondent’s dog earlier that day and forgot to place him back in the kennel in Respondent’s yard in which Respondent’s dog is usually housed. Respondent’s dog jumped over Respondent’s yard fence, and proceeded to run down James Place towards Division Avenue just prior to the time of the attack.

attempt to extricate her from the attack, at which time Respondent's dog began biting Mr. Dorch's pant leg. PX 102.

Mr. Dorch then placed Shang-Hi back on the ground, and Respondent's dog continued attacking Shang-Hi. Mr. Dorch wrapped Shang-Hi's leash around Respondent's dog's neck in order to hinder him from continuing the attack. Respondent's dog lunged at Mr. Dorch who shielded himself with his right hand. Respondent's dog bit Mr. Dorch's right hand, but shortly thereafter refocused his attack on Shang-Hi. Shang-Hi ultimately lost consciousness during the attack. PX 102. Subsequently, an acquaintance of Respondent, Russell Carter, and other unidentified persons came to the scene of the attack and took control of Respondent's dog. Mr. Dorch then proceeded home with Shang-Hi to assess their injuries. Prior to this attack, Mr. Dorch had not encountered Respondent's dog nor, to the best of his knowledge, had Shang-Hi encountered Respondent's dog.

As a result of the attack, Shang-Hi received emergency medical treatment at the Friendship Hospital for Animals later that evening. PX 103. Shang-Hi was treated for multiple puncture wounds on her back, throat, paw and groin area, and also received two stitches on her tongue. PX 102; PX 103; PX 105-116. Mr. Dorch was billed \$522.00 for Shang-Hi's treatment. PX 103. Mr. Dorch received minor injuries to his right hand as a result of the attack. His injuries were treated at the George Washington Medical Center on August 1, 2001. PX 101; PX 102; PX 117.<sup>9</sup>

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<sup>9</sup> The D.C. Department of Health Animal Bite Report offered as PX101 has a bite date of "6/31/01." Ms. Keller testified without challenge that the correct date of the report is July 31, 2001 and I so find July 31, 2001 to be the correct date of the report.

The D.C. Animal Control impounded Respondent's dog on August 3, 2001.<sup>10</sup> All of Respondent's witnesses testified that, based on their personal experiences with him, Respondent's dog should not be considered dangerous. None of Respondent's witnesses observed the attack from the beginning, however. Mr. Carter testified that, with the exception of a dog named "Japan" who also resides with Respondent, Respondent's dog is not accustomed to being around other dogs.<sup>11</sup>

### **III. Conclusions of Law**

#### **A. Is Respondent's Dog a "Dangerous Dog" Under D.C. Code § 6-1021.1 (1981 ed.)**

At the hearing, the Government represented that it sought to establish by a preponderance of the evidence that Respondent's dog is a dangerous dog under D.C. Code § 6-1021.1(1)(A)(i) (1981 ed.) which provides in relevant part that a "Dangerous dog" means any dog that: "(1) Has bitten or attacked a person or domestic animal without provocation . . . ." *See DOH v. Long*, OAH No. A-01-80056 at 10-11 (Final Order, July 9, 2001) (interpreting the meaning of "provocation" under the statute). To the extent that a dog was provoked to attack a person or another domestic animal, the dangerous dog classification is inapplicable and the Government's case would be dismissed. *Id.*

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<sup>10</sup> While there is no evidence in the record that the Government obtained a search warrant pursuant to D.C. Code § 6-1021.2(b) (1981 ed.) prior to impounding Respondent's dog, Respondent has not contested the lawfulness of the impoundment procedure in these proceedings. *See* SCR-Civil Rule 204.

<sup>11</sup> At the hearing, Ms. Keller testified that Japan and Respondent's dog had been impounded in June, 2001 based on an alleged biting incident on June 18, 2001. Mr. Carter also provided testimony

In this case, it is undisputed that Respondent's dog attacked both Mr. Dorch and his dog on July 31, 2001. Moreover, by merely walking in a public area, neither Mr. Dorch nor his leashed dog provoked the attack by Respondent's dog for purposes of the statute.<sup>12</sup> *Cf. DOH v. Byrd*, OAH No. A-01-80075 at 13 (Final Order, August 17, 2001) (failing to establish that attack on dog was "without provocation" where dog was not on a leash, entered a private yard and was fully engaged with the alleged attacking dog). The Government, therefore, has met its burden of proof. Accordingly, I conclude that on July 31, 2001, Respondent's dog attacked both Mr. Dorch and his dog, Shang-Hi, without provocation for purposes of D.C. Code § 6-1021.1(1)(A)(i) (1981 ed.), and, as a result, Respondent's dog is a dangerous dog within the meaning of that statute.

**B      Would Respondent's Dog Constitute a Significant Threat to the Public Health and Safety if Returned to Respondent?**

Once a dog has been found to be dangerous, the applicable statute requires that I determine whether the return of the dog to its owner would "constitute a significant threat to the

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regarding the alleged incident. As this incident is not necessary for the disposition of this case, however, I do not make any findings regarding this testimony.

<sup>12</sup> It is unlawful in the District of Columbia to walk a dog without a leash in a public space. *See* D.C. Code §§ 6-1001(1), 6-1008(a) (1981 ed.); 24 DCMR 900.3. To the extent an alleged victim has violated the District's leash law, however, that alone is insufficient to prove provocation for purposes of D.C. Code § 6-1021.1(1)(A)(i) (1981 ed.). There must be a proximate causal relationship between the illegal activity and the attack in order to find that an attack was provoked. *See DOH v. Long*, OAH No. A-01-80056 at n.7 (Final Order, July 9, 2001); *Wagshal v. District of Columbia*, 216 A.2d 172, 175 (D.C. 1966) (defining proximate cause as "that cause which, in natural and continual sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred"). A mere violation of the District's leash law, without more, would not ordinarily be deemed a proximate cause of an attack.



public health and safety . . . .” D.C. Code § 6-1021.2(a) (1981 ed.). A dangerous dog that is found to constitute a significant threat to the public health and safety if returned to its owner may be humanely destroyed by the Government. D.C. Code § 6-1021.3 (1981 ed.). As this administrative court previously discussed in *DOH v. Evans*, the “significant threat” determination may involve a two-tiered analysis:

There are two elements to the “significant threat” determination. First, the statute imposes certain mandatory requirements upon the owner of the dog. D.C. Code §§ 6-1021.5. An owner’s failure to satisfy those requirements demonstrates that the dog is “significant threat,” because those requirements represent minimum standards to safeguard the public from a dog with a proven history of a least one unprovoked attack. Alternatively, it is possible that the Government might prove that there would be a significant threat even if all the statutory requirements were satisfied . . . .

*DOH v. Evans*, OAH No. A-01-80043 at 12-13 (Final Order, February 9, 2001). In this case, I need not reach the issue of whether the Government can establish there would be a significant threat even if all the statutory requirements were satisfied. Respondent’s failure to satisfy those statutory requirements is sufficient to justify a conclusion that the return of Respondent’s dog to Respondent would present a significant threat to public health and safety. *Accord Evans v. DOH*, Case No. 01cal347 at 5 (D.C. Super. Ct. Apr. 20, 2001) (affirming on appeal the determination that the failure of owner of a dangerous dog to satisfy all the requirements of D.C. Code §§ 6-1021.4, 6-1021.5 (1981 ed.) constitutes a significant threat to public health and safety).

In concluding that Respondent's dog would present a significant threat to the public health and safety if returned to him, I rely upon two subsections of D.C Code § 6-1021.4 (1981 ed.) which Respondent has failed to satisfy:

- D.C. Code § 6-1021.4(5) (1981 ed.):** This provision requires that the owner of the dangerous dog have a "proper enclosure" to confine the dangerous dog. The statute further defines a proper enclosure as a "secure confinement indoors or secure confinement in a locked pen or structure measuring as least 5 feet in width, 10 feet in length, and 6 feet in height, with secure sides and a secure top, which provides protection from the elements for the dog, is suitable to prevent the entry of young children, and is designed to prevent the animal from escaping while on the owner's property." D.C. Code § 6-1021.1(3) (1981 ed.). Respondent's witnesses offered general testimony at the hearing that Respondent's dog was housed in a kennel-like structure in the yard. I cannot conclude from that general testimony, however, that Respondent's kennel was in conformity with the specific statutory requirements for a "proper enclosure" as set forth in D.C. Code § 6-1021.1(3) (1981 ed.). Given the fact that, in this case, Respondent's dog broke the confines of Respondent's yard in furtherance of the attack on Mr. Dorch and his dog, sufficient evidence of a proper enclosure for Respondent's dog is of particular salience. Accordingly, Respondent has failed to satisfy the requirements of D.C. Code § 6-1021.4(5).
- D.C. Code § 6-1021.4(7):** This provision requires the owner of the dangerous dog to secure a policy of liability insurance in the amount of at least \$50,000 insuring the owner for any personal injuries inflicted by the dangerous dog. The importance of maintaining such an insurance policy is evident. As discussed in *DOH v. Perry*, OAH No. A-00-80005 at 3 (Final

Order, May 3, 2000), the absence of such insurance “creates a significant risk that if the dog ever committed a second unprovoked bite in the District of Columbia, a complainant would not have access to all necessary or desirable health care and support because of a lack of recourse to Respondent’s insurance policy.” In an attempt to show compliance with this requirement, Respondent submitted a September 26, 2001 Homeowners Form Rate Quote from State Farm Fire and Casualty Company. RX 207. As noted by the Government, however, this document is an insurance rate *quote*, and is not evidence of an insurance policy. Indeed, Respondent has not submitted any evidence that he has obtained the type of insurance coverage required by the statute. Accordingly, Respondent has failed to satisfy the requirements of D.C. Code § 6-1021.4(7) (1981 ed.).<sup>13</sup>

Because Respondent has failed to satisfy the important safety requirements codified in D.C. Code §§ 6-1021.4(5) and 6-1021.4(7) (1981 ed.), I must conclude that there will be a significant threat to public health and safety if his dog is returned to him. *Evans v. DOH*, Case No. 01ca1347 at 5 (D.C. Super. Ct. Apr. 20, 2001).

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<sup>13</sup> Given Respondent’s failure to satisfy the requirements of D.C. Code §§ 6-1021.4(5) and 6-1021.4(7) (1981 ed.), I need not decide whether Respondent has satisfied the requirements of the remaining provisions of D.C. Code §§ 6-1021.4 and 6-1021.5 (1981 ed.) for purposes of this disposition. See *Evans v. DOH*, Case No. 01ca1347 at 5 (D.C. Super. Ct. Apr. 20, 2001); RX 200-206.

#### IV. Order

Based upon the above findings of fact and conclusions of law, and the entire record in this matter, it is, this \_\_\_\_ day of \_\_\_\_\_, 2001:

**ORDERED**, that, “Bullet,” a dog owned by Respondent Ibn Latimore, is hereby declared to be a dangerous dog, as defined in D.C. Code § 6-1021.1(1)(A)(i) (1981 ed.); and it is further

**ORDERED** that, it is hereby determined that “Bullet” will constitute a significant threat to the public health and safety if returned to his owner; and it is further

**ORDERED** that, pursuant to D.C. Code § 6-1021.3 (1981 ed.), the Government may humanely destroy “Bullet”; and it is further

**ORDERED** that, pursuant to D.C. Code § 6-1021.2(e) (1981 ed.), Respondent may contest the foregoing determinations within five (5) days of the date of this order by bringing a petition in the Superior Court of the District of Columbia; and it is further

**ORDERED** by this administrative court, *sua sponte*, that, due to the irreparable injury that will be inflicted in accordance with this order, this order is hereby **STAYED** until 4:00 PM on November 7, 2001 in order to permit Respondent to seek review and a further stay in the Superior Court. The Government may not destroy the dog before the date and time noted above.

This stay will expire automatically, without further order of this administrative court, on the day and time noted above unless the Superior Court or this administrative court grants a further stay.

**/s/ 10/31/01**

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Mark D. Poindexter  
Administrative Judge